

¹ See the application for hearing claimant filed on February 2, 2004, with the Division of Workers Compensation.

Conversely, claimant argues on December 21, 2003, she injured and aggravated her knee as she moved around a bed while changing sheets. Claimant contends the knee injury resulted from a combination of an employment hazard and her preexisting knee condition. Accordingly, claimant argues the Board should affirm the March 18, 2004 Order for Compensation.

The sole issue before the Board on this appeal is whether claimant's December 21, 2003 incident arose out of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

Respondent employed claimant as a housekeeper. On December 21, 2003, claimant's knee gave way while she was making a bed. At the time of the incident, claimant was performing her assigned job duties. Claimant described the incident as follows:

Okay. I was cleaning a room, which was one of my job duties, and I was making a bed, I believe, and I just turned a certain way, and my knee went back out. It went out. It's happened there a couple times since I've worked there.²

Exact -- well, I was making the bed, and as I turned to go around it, it went one way and kind of I went the other, so it just -- it does that.³

I was pulling the bedspread trying to get it on there and went around the bed to go to the other side to tuck it in, and when I went around the corner of the bed, that's when it happened.⁴

Claimant has a long history of serious knee problems, including her knee giving way. Moreover, Dr. Kenneth L. Wertzberger recommended knee surgery as early as July 2002. Nonetheless, claimant is entitled to receive workers compensation benefits if the December 21, 2003 incident aggravated her previously injured knee.

² P.H. Trans. at 5.

³ *Id.* at 5.

⁴ *Id.* at 25-26.

A worker is entitled to receive benefits under the Workers Compensation Act even when an accident at work only serves to aggravate a preexisting condition.⁵ The test is not whether the accident caused the condition but, instead, whether the accident aggravated or accelerated a preexisting condition.⁶

Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.⁷ Before an accident arises out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.⁸

This court has had occasion many times to consider the phrase “out of” the employment, and has stated that it points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. . . .

This general rule has been elaborated to the effect that an injury arises “out of” employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury.

An injury arises “out of” employment if it arises out of the nature, conditions, obligations and incidents of the employment. . . . [T]he foregoing tests exclude an injury not fairly traceable to the employment and not coming from a hazard to which the workman would have been equally exposed apart from the employment.⁹

The Board affirms the Judge’s finding that claimant’s December 21, 2003 accident arose out of her employment as a housekeeper with respondent. At the time of the incident, claimant was making a bed, which was part of her work duties. As claimant was moving around the bed, her knee gave way. The Board agrees with claimant that the leaning, bending, and maneuvering to make beds entail certain risks and hazards for a housekeeper. Accordingly, claimant’s knee injury resulted from an activity and risk related to her work. Therefore, claimant’s accident is directly traceable to her employment.

⁵ *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

⁶ *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

⁷ See K.S.A. 44-501.

⁸ See *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

⁹ *Siebert v. Hoch*, 199 Kan. 299, 303-304, 428 P.2d 825 (1967) (citations omitted).

Respondent and its insurance carrier contend the *Martin*¹⁰ decision is controlling and, therefore, the Board should find claimant's accident did not arise out of her employment with respondent. The Board, however, concludes the *Martin* decision is distinguishable upon its facts. In *Martin*, the Kansas Court of Appeals noted the worker's back injury, which occurred while exiting a truck, resulted from a personal risk and had no relationship to his work. Whether a causal relationship exists between an accident and the nature, conditions, obligations or incidents of the employment is a question of fact to be decided on a case-by-case basis.

As noted above, the sole issue before the Board on this appeal from the preliminary hearing order was whether claimant's December 21, 2003 accident arose out of her employment with respondent. Whether claimant sustained anything more than a temporary aggravation from that accident is a question that may be addressed at the time of final award.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.¹¹

WHEREFORE, the Board affirms the March 18, 2004 Order for Compensation.

IT IS SO ORDERED.

Dated this ____ day of May 2004.

BOARD MEMBER

c: Sally G. Kelsey, Attorney for Claimant
David J. Bogdan, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹⁰ *Martin*, 5 Kan. App. 2d 298.

¹¹ K.S.A. 44-534a(a)(2).